



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-RC

MEMORANDUM

TO: Site File
Financial Management Program

FROM: Carol J. Pokorny, 8ENF-RC *Carol J. Pokorny*
Technical Enforcement Program

Suzanne J. Bohan, 8ENF-L *Suzanne J. Bohan*
Legal Enforcement Program

SUBJECT: Cost Recovery for RP01/OU01 at the Town of Basin,
Basin Mining Area NPL Site

There has been some confusion over whether costs incurred at the Basin Mining Area NPL Site, Town of Basin, MT (OU01) should be billed under the Administrative Order on Consent for Removal Action, EPA Docket # CERCLA-08-2001-09 (Buster Bullock, Defendant).

When costs are pulled, there is a considerable amount that shows up. However, these costs are ALL attributable to actions other than those related to the above-referenced AOC.

Mr. Bullock performed a very small removal, which lasted approximately 3 days. His activities consisted of the removal of a small tailings pile located on his property, the transport of the tailings to, and deposition of the tailings into, the Luttrell Pit. The Removal activities were of such a limited scope that the On-scene Coordinator did not charge any of his time to oversight of these removal activities, and there were no contractor oversight costs.

Although the AOC provides for oversight billings, there are no documented costs to be billed. The AOC is being routed for closeout concurrence as this memo is being written. Should you have questions, please contact Carol Pokorny, Enforcement Specialist at ext. 6970, or Suzanne Bohan, Enforcement Attorney, at ext 6925.

cc: Dianna Lim, 8EPR-PS
Audrey Henkel, 8ENF-RC
Martha Walker, 8TMS-F



ADMINISTRATIVE ORDER/CONSENT DECREE

CLOSE-OUT FORM

SITE NAME: Basin Mining Area NPL OU #01 - Town of BasinSSID #: 08-K5DOCKET NUMBER: CERCLA-08-2001-09DOCUMENT TYPE: ☒ AOC ☐ CD ☐ UAO ☐ OTHER

IF OTHER, PLEASE DESCRIBE: _____

ACTIVITY: ☒ REMOVAL ☐ RI/FS ☐ RD/RA ☐ CASH OUT ☐ OTHER

IF OTHER, PLEASE DESCRIBE: _____

EFFECTIVE DATE: 8-14-01

CERTIFICATION OF COMPLETION DATE: _____

PLEASE ATTACH ALL COPIES OF ALL CLOSE-OUT RELATED DOCUMENTS:

☐ FINAL OSC REPORT ☐ FINAL BILLING DOCUMENTS☒ CERTIFICATION LETTER BY PRP OF WORK COMPLETED☒ OTHER DOCUMENTS OSC Rpt. Comp. Hr, POLREP, AOC☐ THE ABOVE DOCUMENTS ARE LOCATED IN THE SUPERFUND RECORDS CENTER AND THE FINANCE OFFICE RECORDS.FINAL DEMAND/BILLING DATE: No oversight costs to be billed AMOUNT: -0-Actual removal lasted only a couple of days.

RECOVERED FOR:

☐ OVERSIGHT ☐ PAST COSTS ☐ FUTURE COSTSDATE OF PAYMENT: N/A AMOUNT: N/A

IF THE AMOUNT PAID DIFFERS FROM THE AMOUNT BILLED, PLEASE EXPLAIN: _____

Cara J. Sokorny

Enforcement Signature

Date: 10/24/03David M. Allen

Finance Signature

Date: 12-8-03Sam A. P.

Legal Enforcement Program

Date: 11/10/03Ken Way

RPM/OSC Signature

Date: 11/10/03OFFICIAL CLOSE-OUT DATE 12/8/03

THIS CLOSE-OUT DOES NOT AFFECT ANY OF THE ONGOING OBLIGATIONS REMAINING UNDER THE AO/CD.

Attachments -
1 AOC
2 Certification of completion by PRP (Final Report)
3 AOC Closeout letter from OSC
4 POLREP

COPY

1061978

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

01 AUG 21 AM 8:01

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:
Basin Mining Area Superfund Site,
Town of Basin Operable Unit
Basin, Montana
SSID #K5, OU #01

Buster Bullock,
Respondent

ADMINISTRATIVE ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region VIII
EPA Docket No. CERCLA-08-2001-09

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§ 9604, 9606(a), 9607 and 9622

I. JURISDICTION AND GENERAL PROVISIONS

A. This Order is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Buster Bullock ("Respondent"). This Order provides for the performance of the removal action by Respondent and the reimbursement of future response costs incurred by the United States in connection with this Order. The subject of this order is the property located in a portion of Mineral Survey 214 in Basin, Montana, more fully described in Appendix A, attached hereto ("Property"). The Property is located within the Basin Mining Area Superfund Site, Town of Basin Operable Unit 01 ("Site"). This Order requires the Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Property.

B. This Administrative Order on Consent ("Order") is issued pursuant to the authority vested in the President of the United States by sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation No. 14-14-C, and redelegated on December 20, 1996, to the Region VIII Assistant Regional Administrator for the Office of

Ecosystems Protection and Remediation, with the concurrence of the Assistant Regional Administrator for the Office of Enforcement, Compliance, and Environmental Justice.

C. EPA has notified the State of Montana ("State") of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

D. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with, and be bound by, the terms of this Order. Respondent further agrees that he will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

A. This Order applies to and is binding upon EPA, and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

B. Respondent shall ensure that his contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

B. "Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

C. "Day" shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

D. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

E. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

F. "Future Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), including, but not limited to, direct and indirect costs, that the United States incurs after the effective date of this Consent Order in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Order, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a).

G. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

H. "Parties" shall mean EPA and the Respondent.

I. "Property" shall mean the parcel of land owned by Buster Bullock in Basin, Montana, described in Appendix A.

J. "Respondent" shall mean Buster Bullock.

K. "Site" shall mean the Town of Basin Operable Unit 01 of the Basin Mining Area Superfund Site. The Site is generally depicted on the map attached as Appendix B.

L. "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities.

IV. FINDINGS OF FACT

A. The Basin Mining Area National Priorities List (NPL) site includes the community of Basin, Montana (Town of Basin OU 01), and the surrounding watersheds of Basin Creek, Cataract Creek, and part of the upper Boulder River (Basin Watershed OU 02). Hard rock mining in the Basin area began in the 1870s and continued intermittently into the late 1950s. Extensive mining and milling within the Basin Mining Area have resulted in uncontrolled releases of metal contaminants from waste rock, tailings (waste material from processing of mineral ore), and contaminated water to local streams.

B. Primary sources of contamination consist of numerous scattered mine waste rock piles and tailings piles resulting from historical mining and ore processing in the town of Basin in the late 1800s and early 1900s. Historical mining activities upstream of the town are also a source of contamination due to discharges to Basin Creek, which passes directly through town, or to Boulder River on the south edge of town. Releases from these sources have resulted in contamination of soil, surface water, sediment, groundwater, air, and biota. Evidence for these releases includes elevated concentrations of contaminants in soil, surface water, and sediment;

visual staining of stream sediments; observed mine wastes on stream banks; and noticeable erosion of wastes away from source piles.

C. The Town of Basin is located on both sides of the Boulder River at the base of the Basin Creek watershed. Basin Creek flows directly through the Town of Basin, joining the Boulder River on the south side of town. Kleinsmith Gulch flows north into the Boulder River on the southwest end of the town. Cataract Creek flows south and joins the Boulder River, approximately one mile east of town. Steep foothills rise approximately 500 feet above the surrounding valley on the east and west sides of Basin Creek and the south side of the Boulder River. Interstate Highway I-15 crosses the town in an east-west direction and generally parallels the Boulder River within the watershed valley.

D. The Town of Basin consists of several tailings pile areas spread around the town, a small smelter site, a mill site, and a suspected leaching operation on the east side of town. The Jib Mill/Hope-Katie Mine complex is located on the south side of the Boulder River immediately southwest of town. This waste source area was originally used as an ore extraction site and a small milling operation. Remnants of former structures remain in this area, along with a large tailings pile.

E. In 1994, EPA conducted a Removal Action in an area at the south end of Valley Street in the Town of Basin. Approximately 5,000 cubic yards of contaminated soil/tailings were excavated and disposed at the mine waste repository in Butte, Montana. The excavated areas were backfilled with clean soil, graded, fertilized, seeded, and mulched.

F. The Property contains approximately 2,000 cubic yards of ore containing hazardous substances. The ore is located in a large uncovered pile and is susceptible to rains, wind and snow.

G. Respondent is the current owner of the Property. Respondent acquired the Property on April 13, 2001.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

A. The Property is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The contaminants found at the Property, as identified in the Findings of Fact above, include "hazardous substances" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

C. Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

D. Respondent may be liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

E. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

F. The conditions present at the facility constitute an imminent and substantial endangerment to public health, welfare, or the environment. Factors that may be considered are set forth in section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP").

G. The actual or threatened release of hazardous substances from the facility may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

H. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to, all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

A. Designation of Contractor and Project Coordinators

1. Respondent shall perform the removal action required by this Order himself. Respondent shall notify EPA of the names and qualifications of any contractors or subcontractors retained to assist in the performance of the removal action under this Order at least 7 days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent to do the removal action. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor or notify EPA that it will perform the removal action itself within 10 business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within 10 business days of EPA's disapproval.

2. Within 10 days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present onsite or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 business days following EPA's disapproval.

Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

3. EPA has designated Steven Way as its Project Coordinator for the removal action. Respondent shall direct all submissions required by this Order to Mr. Way at U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, CO 80202. EPA and Respondent shall have the right, subject to the immediately proceeding paragraph, to change their designated Project Coordinator. Respondent shall notify EPA 10 business days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

B. Work to Be Performed

1. Scope of Work and Schedule

Respondent shall remove the ore pile and two feet of soil underlying the pile. The ore shall be transported in trucks to the Luttrell Mine Waste Repository for disposal in accordance with the protocols for use of the repository. The area of the pile shall be regraded at the direction of the OSC. This work shall be completed by September 1, 2001. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to this Order. Respondent shall not commence or undertake any removal action on the Site without prior EPA approval.

2. Health and Safety Plan

Within 30 days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

3. Sampling

Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take any samples it deems necessary of soils and other materials at the Property.

4. Reporting

Within 30 days after completion of all removal actions required under this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or a statement of actual costs

incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled onsite, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. Access to Property and Information

Respondent shall provide access to the Property and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Property and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Montana representatives. These individuals shall be permitted to move freely at the Property and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or his contractor(s), or on the Respondent's behalf during implementation of this Order.

D. Record Retention, Documentation, Availability of Information

1. Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Property, for five years following completion of the removal actions required by this Order. At the end of this five year period and 30 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this section at any time before expiration of the five year period at the written request of EPA.

2. Respondent may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C.

§ 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

E. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, State, and federal laws and regulations except as provided in CERCLA section 121(e) and 40 CFR section 300.415(i). In accordance with 40 CFR section 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

F. Emergency Response and Notification of Releases

1. If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Property or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Manager or, in the event of his/her unavailability, shall notify EPA On-Scene Coordinator Steve Way at (303) 312-6723 of the incident or Site conditions. If Respondent fail to respond, EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

2. In addition, in the event of any release of a hazardous substance from the Property, Respondent shall immediately notify EPA's Project Manager and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

VII. AUTHORITY OF THE EPA PROJECT COORDINATOR

The EPA Project Coordinator shall be responsible for overseeing the Respondent's implementation of this Order. The EPA Project Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal action undertaken at the Property. Absence of the EPA Project Coordinator from the Site shall not be cause for stoppage of work unless specifically directed by the EPA Project Coordinator.

VIII. REIMBURSEMENT OF COSTS

A. Respondent shall reimburse EPA for all Future Response Costs, not inconsistent with the NCP, incurred by the United States. On a periodic basis, EPA shall submit to Respondent a bill for future response costs that includes a cost accounting. Respondent shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

Regular Mail: Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, PA 15251-6859

Federal Express,
Airborne, etc.: Environmental Protection Agency 360859
Mellon Client Services Center, Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire transfers must be sent directly to the Federal Reserve bank in New York, New York, with the following information:

ABA=021030004
TREAS NYC/CTR/
BNF=/AC-68011008

B. To ensure that payment is made to the proper account, each check shall reference the name and address of Respondent, the Site name (Basin Mining Area NPL Site), the EPA Region and Site Spill ID Number and Operable Unit number (SSID #08-K5, OU #01), and the EPA Docket Number for this action (Refer to first page of this Consent Order).

C. At the time of payment, Respondent shall send notice that such payment has been made to:

Carol J. Pokorny, Enforcement Specialist (8ENF-T)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Frank MacFadden, Financial Management Officer (8TMS-F)
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, Colorado 80202-2466

D. In the event that the payments for future response costs are not made within 30 days of the Respondent's receipt of the bill, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in section 107(a) of CERCLA. The interest shall begin to accrue from the date of the Respondent's receipt of the bill and shall continue to accrue until the unpaid principal balance and any accrued interest are paid in full. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section.

E. Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the EPA Project Coordinator. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 10 days after the dispute is resolved.

IX. DISPUTE RESOLUTION

A. The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

B. If the Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, the Respondent shall notify EPA in writing of his objections within 7 days of such action, unless the objections have been informally resolved.

C. EPA and Respondent shall have 14 days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute through formal negotiations ("Negotiation Period"). The negotiation period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

D. Any agreement reached by the parties pursuant to this section shall be in writing, signed by both parties, and shall, upon the signature by both parties, be incorporated into and become an enforceable element of this Order. If the parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to the Respondent. The decision of EPA shall be incorporated into and become an enforceable element of this Order upon Respondent's receipt of the EPA decision regarding the dispute. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this section.

E. Following resolution of the dispute, as provided by this section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No EPA decision made pursuant to this section shall constitute a final agency action giving rise to judicial review.

X. FORCE MAJEURE

A. Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to his contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

B. Respondent shall notify EPA orally within 24 hours after the event, and in writing within 3 days after Respondent becomes, or should have become, aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondent.

C. If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

XI. STIPULATED AND STATUTORY PENALTIES

A. For each day, or portion thereof, that Respondent fails to perform, fully, any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable for a stipulated penalty of \$100 per violation.

B. Upon receipt of written demand by EPA, Respondent shall make payment to EPA within 30 days. Interest shall accrue on late payments as of the date the payment is due which is the date of the violation or act of non-compliance triggering the stipulated penalties.

C. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the work required under this Order.

D. Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. Section 9604.

XII. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

XIII. OTHER CLAIMS

A. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or his directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

B. Except as expressly provided in Section XIV - Covenant Not To Sue, nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under sections 106(a) and 107(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9607(a).

C. This Order does not constitute a preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. COVENANT NOT TO SUE

A. Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XX - Notice of Completion, EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent

for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

B. Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Respondent under section 107(a) of CERCLA for recovery of Future Response Costs incurred by the United States in connection with this removal action or this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VIII - Reimbursement of Costs.

C. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of his obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

XV. CONTRIBUTION PROTECTION

A. With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by section 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. Sections 9613(f)(2) and 9622(h)(4).

B. Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XVI. INDEMNIFICATION

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent, Respondent's heirs, employees, agents, contractors, subcontractors, receivers, trustees or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent, and any persons for performance of work on or relating to the Property, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding paragraph.

XVII. INSURANCE

At least seven (7) days prior to commencing any on-site work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to

EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XVIII. MODIFICATIONS

A. Modifications to any plan or schedule may be made in writing by the EPA Project Coordinator or at the EPA Project Coordinator's oral direction. If the EPA Project Coordinator makes an oral modification, it will be memorialized in writing within 7 days; provided, however, that the effective date of the modification shall be the date of the EPA Project Coordinator's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

B. If Respondent seeks permission to deviate from the Work identified in this Order or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

C. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of his obligation to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XXI. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including record retention and payment of response costs, EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. The Respondent shall implement the corrections and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the corrections shall be a violation of this Order.

XXII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XXIII. EFFECTIVE DATE

The effective date of this Order shall be the date EPA signs this Order.

IN THE MATTER OF:
Basin Mining Area Superfund Site
Town of Basin Operable Unit SSID # K5
Administrative Order on Consent for Removal Action
Buster Bullock, Respondent

Agreed this 27th day of July, 2001.

BY: 

Buster Bullock

It is so ORDERED and Agreed this 14th day of August, 2001.

BY: 

Douglas M. Skie, Director
Preparedness, Assessment and Emergency Response
Office of Ecosystems Protection
and Remediation
U.S. Environmental Protection Agency
Region VIII

Appendices: Appendix A - Property Description
Appendix B - Site Map

APPENDIX A

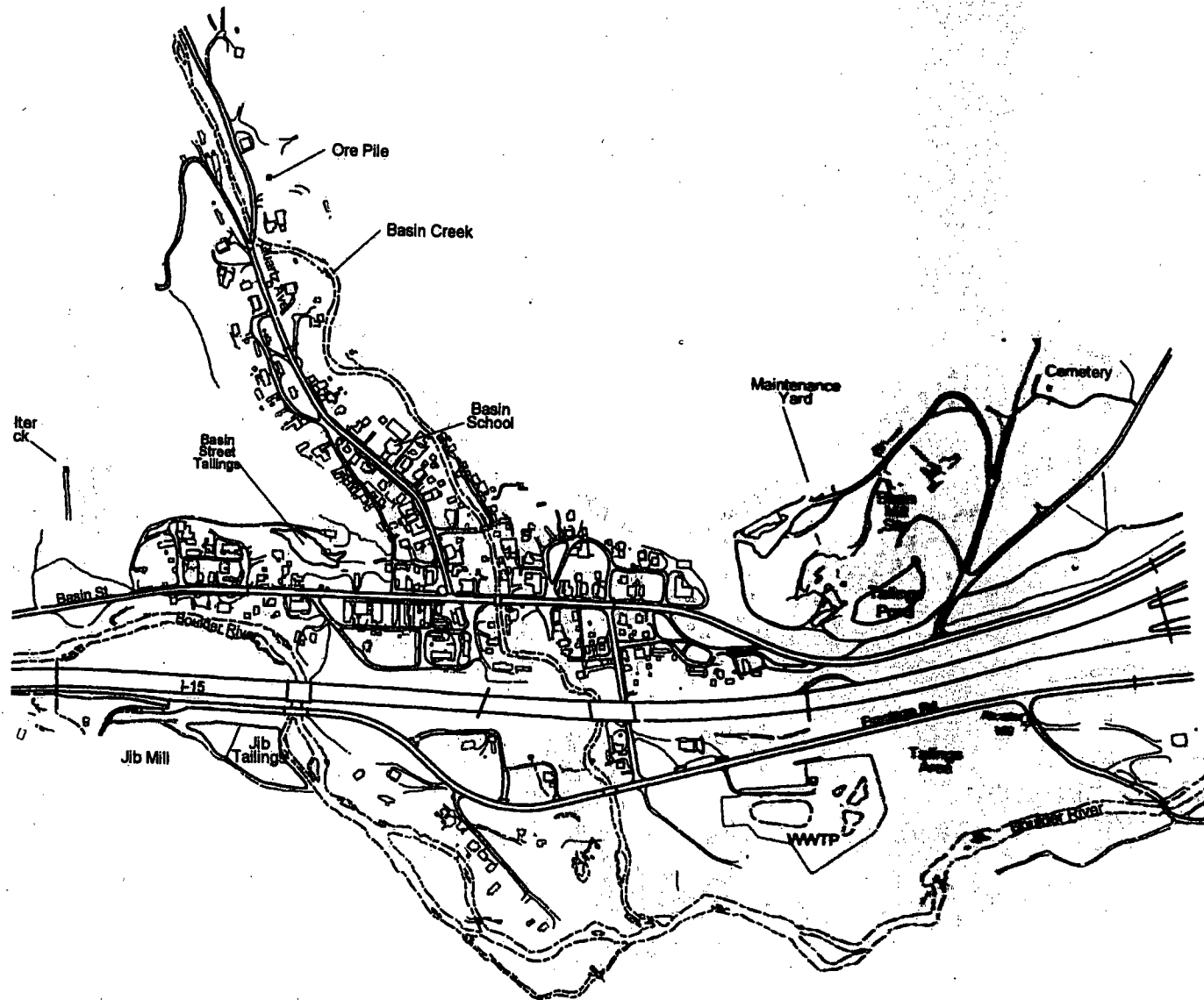
BOOK 130 DEEDS PAGE 803

EXHIBIT A

County of Jefferson and State of Montana, to-wit: A portion of Mineral Survey 214 described as follows: Beginning at the northwest corner of the Basin Townsite, Jefferson County, Montana, which is also a point on the fifth course of Mineral survey No. 214; thence N. $29^{\circ}50'W$, 1304.9 feet to Corner No. 6 of Mineral Survey No. 214; thence N. $67^{\circ}57'E$, 412.0 feet to Corner No. 7 of Mineral Survey No. 214; thence S. $29^{\circ}07'E$, 100.3 feet along the seventh course of Mineral Survey No. 214 to Corner No. 1 of Mineral Survey No. 4382; thence S. $30^{\circ}14'E$, 722.0 feet along the seventh course of Mineral Survey No. 214 to Corner No. 2 of Mineral Survey No. 4382; thence S. $29^{\circ}39'44"E$, 396.1 feet along the seventh course of Mineral Survey No. 214 to the northeast corner of the Basin Townsite; thence S. $56^{\circ}00'W$, 411.89 feet along the north line of the Basin Townsite to the point of beginning and containing 11.876 acres, excepting therefrom the following described parcels: The Straski Tract and the Baumgardner Tract as described on COS Folio 121-A records of Jefferson County; Tract A, B, C, D, E and F as described on COS Folio 139-B; A 0.560 acre tract as described on COS Folio 216-A; a 0.249 acre tract as described on COS Folio 244-B; two tracts of land deeded to Basin Water &/or Sewer District as described on COS Folio 98C and Folio 98D.

Excluding a 1.267 acre tract as described on COS Folio 308D records of Jefferson County, Montana. Reference Book 118 of Deeds page 624-625

An undivided portion of Solitaire Placer, M.S. No. 4382, in Sec. 17 & 18, T.6N, R.5W., containing 1.75 acres more or less. A more particular description can be found in Book E of Patents page 588 in the Clerk and Recorder's office of Jefferson County. Reference Book 118 of Deeds page 622-623.



LEGEND:

~ Rivers

~ Roads

Vegetation

<p>Town of Basin Basin, Montana</p>		<p>Figur 3</p>
<p>CDM Federal Programs Corporation <small>A subsidiary of CDMC Division & Services Inc.</small></p>	<p>Site Map</p>	<p>3K</p>

490957 EASON

Steve Way
Environmental Protection Agency
999 18th St.
Suite 300 EPR-ER
Denver, Co. 80202

January 8, 2002

Steve,

As you discussed with Tom Butler this afternoon on the phone, here is the final report of the remediation activities that took place on the property known as the Ball Diamond in Basin. Mt.

During the month of July 2001 at various dates the contaminated soil was hauled from the Ball Diamond and trucked up Basin Creek Rd. to the Luttrell Mine Waste Repository for disposal in accordance with the protocols for use of the repository. The waste was hauled in trucks in accordance with the trucking protocols for the repository. A total of 1800 cubic yards of contaminated soil was removed. The area below the pile was excavated down 2 feet. The below grade excavated material was also hauled to the Luttrell Mine Waste Repository in accordance with trucking/disposal protocols for the repository. Once the waste and excavated material was hauled from the site, the Environmental Protection Agency conducted tests in the excavated area. I never did see the actual results of the tests, only was notified that it was ok to proceed.

After the tests in the excavated area concluded that the contaminated material had been removed, the excavated area was filled with approximately 370 yards of fill to bring it back to grade.

I figured that it cost me \$1.50 per yard to load the material and \$8.25 per yard to haul the material to the repository for a total of \$9.75 per yard. This works out to be \$17,550. Furthermore, the fill material that was placed in the excavated area worked out to be \$10.00 per yard. This included the cost of loading the material, trucking it to the site and placing the material in the excavated area. This worked out to be \$3700. The grand total for the remediation activities was \$21,250.

Please let me know if you need any further information.

Thanks



Buster Bullock

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Samples were collected by Bill LaRow on 7/17/01

BK-FPILE was a sample from the remaining stock pile at the B. Bullock property

BK-PR-01 was a six-point composite sample collected from final surface of removal area

ID	InstID	Analysis Date	Time	Sb	SbQ	As	AsQ	Ba	BaQ	Cd	CdQ	Ca	CaQ	CrHI	CrHIQ	CrLO	CrLOQ	Co	CoQ	Cu	CuQ
BK-FPILE	Q-024	7/18/2001	1320	269		3269		483		172	U	5899		517	J	539	U	333	U	684	
BK-PR-01	Q-024	7/18/2001	1314	272		2976		547		172	U	6069		492	U	539	U	333	U	428	

ID	Fe	FeQ	Pb	PbQ	Mn	MnQ	Hg	HgQ	Mo	MoQ	Ni	NiQ	K	KQ	Rb	RbQ	Se	SeQ	Ag	AgQ	Sr	SrQ	Th	ThQ
BK-FPILE	29502		3464		1302	J	92	U	17	J	208	U	12461		158		35	U	107	U	159		38	
BK-PR-01	29597		4302		1510	J	92	U	19	J	208	U	17519		148		35	U	107	U	177		43	

ID	Sn	SnQ	Ti	TiQ	U	UQ	Zn	ZnQ	Zr	ZrQ
BK-FPILE	111	U	1171	J	17	U	696		106	
BK-PR-01	111	U	1187	J	17	U	653		129	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

COPY

OCT 24 2003

Ref: 8ENF-RC

Mr. Buster Bullock
P.O. Box 364
Boulder, Montana 59632

Re: July 2001 Removal Action in the Town of Basin, MT
Basin Mining Area NPL Site; OU #01
Closeout of Administrative Order on Consent
EPA Docket Number CERCLA-08-2001-09

Dear Mr. Bullock:

The purpose of this letter is to inform you that the Administrative Order on Consent for Removal Action, EPA Docket Number CERCLA-VIII-89-06 (the "Order") is being formally closed. The final report you submitted on January 8, 2002 was accepted and approved, and by this letter, I hereby notify you that you have completed all physical work required under the terms of the Order and its work plan. No further removal activities on the property known as the Ball Diamond are required under the Order.

Be advised, however, that the termination of physical work under the Order does not terminate your obligation to comply with any continuing requirements of the Order, including, but not limited to, record retention. Additionally, please be aware that by closing out the Order, EPA does not waive its right to take other clean-up actions in the future.

I thank you for your cooperation. If you have any questions regarding this letter, please don't hesitate to contact me at (303) 312-6723.

Sincerely,

Steven Way, On-Scene Coordinator
Site Assessment, Emergency Response
and Preparedness Program



Printed on Recycled Paper



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

Sdms 2038158

Ref: 8EPR-ER

**INITIAL/FINAL POLLUTION REPORT
Basin Mining Area (PRP Removal) Site
Basin, Jefferson County, Montana**

I. HEADING

Date: 12/11/01
Site Name: Basin Mining Area (PRP Removal)
From: Steve Way, OSC
To: Patty Kalla, EPA Headquarters
POLREP No.: Initial/Final

II. BACKGROUND

Site No.: K5
Response Authority: CERCLA
Action Memorandum: August 9, 2001
Start Date : July 27, 2001
Completion Date: November 13, 2001

III. SITE INFORMATION

A. Incident Category

Time-Critical, PRP-Lead, Removal Action

B. Site Description

1. Site Location

The Site is located on the PRP's property on the outskirts of the town of Basin, Jefferson County, Montana.

2. Site Characteristics

The removal includes contaminated soils contained in an ore pile on the property of Mr. Buster Bullock, who owns a hauling company and is employed as a subcontractor. On 4/14/01, Mr. Bullock purchased the land on which the ore pile is located and later agreed to conduct the cleanup.



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3. Description of Threat

Initially a Removal Action Memorandum was written and approved to address the need to mitigate threats to the environment posed by high concentrations of arsenic, lead and other metals in the piles of waste materials that are impacting the Basin Creek/Boulder River Watershed. During the activities of the Original Removal Action, the pile of tailings/waste materials on the PRP's property was added because of the level of contamination, the unsecured nature of the situation, and its proximity to the town of Basin.

IV. RESPONSE INFORMATION

A. Situation

1. Removal Actions

After Mr. Bullock inquired about the possibility of assisting with the CERCLA cleanup by removing the ore pile from his newly purchased property, EPA initiated an Administrative Order on Consent.

The PRP began the Removal Action on July 27, 2001. The waste pile was removed and placed in the Lutrell Pit Repository (a repository built into the pit of a modern bankrupt mine at the top of the drainage and shared by EPA and other federal agency removals ongoing in the Basin and Tenmile drainages) where they will be sealed in a lined and capped pit.

2. Planned Removal Actions

The Site removal activities have been completed as per the requirements of the AOC Work Plan. Therefore, this Removal is now considered completed.

V. COST INFORMATION

This was a PRP-Funded Site.